

# Report: investigation into exit packages of former senior officers at Glasgow City Council

27 February 2025



CONTACT: Mairi Millar

CLIENT NAME: GLASGOW CITY COUNCIL

## EXECUTIVE SUMMARY

- We have been instructed to investigate and report on the lawfulness of redundancy/early retirement payments made to five senior officers employed by the Council between April 2021 and May 2024, namely Carole Forrest, Anne Connolly, Robert Anderson, Elaine Galletly, and Annemarie O'Donnell. We have also been asked to investigate the terms of the report dated 15 February 2021 ("the Restructure Report") concerning the restructure of the Chief Executive's Department, within which the early retirement or severance of the above individuals was proposed.
- There is a potential factual dispute emerging in respect of what and when senior elected members of the Council (namely, the Leader of the Council and Committee Convenors) knew about the service reforms and retirements/departures which were heralded within the Restructure Report. We are in receipt of statements from the Leader and the Treasurer of the Council to the extent that those individuals were not aware of the terms on which individuals were made redundant or retired, were not involved in the approval of those arrangements, and were not aware of the scope or scale of the proposals made in the Restructure Report. Ms O'Donnell has stated that the Leader of the Council and relevant Committee convenors were made aware of the retirement of particular officers and service reforms/reallocation of responsibilities "at the appropriate time". There is no evidence showing when precisely senior elected members became aware of, in general terms, the proposals for service reform contained within the Restructure Report. However, we found no evidence that elected members were asked to approve the Restructure Report, or individual applications for severance/early retirement.
- We concluded that the severance terms offered to each individual that are the subject of this investigation were in accordance with applicable Council policies in terms of redundancy payments, pension strain costs and payback periods. We have, however, noted that it is not clear whether Ms Forrest's departure can be said to fall within the scope of the Council's policies on redundancy and early retirement.
- The justifications advanced by the Council for the senior management restructure were ongoing savings by deleting a number of senior posts, and succession planning given the age of senior officers. Those justifications were advanced both in the report setting out the restructure, and background internal correspondence.

- However, we consider that the justification for the early retirement of the Chief Executive was not supported by the Restructure Report or accompanying correspondence. We understand that the former Chief Executive's early retirement was linked to the abolition of the post of Executive Director of DRS. There was no clear justification for doing so. There was no clear justification for the early retirement of the Chief Executive on its own terms contained within the Restructure Report or accompanying correspondence.
- We consider that the Restructure Report should have been subject to elected member input, rather than being approved solely by officers. This is because the officers who approved the Restructure Report also benefitted from its terms (namely, being proposed for early retirement/severance). However, this does not support a finding that the Restructure Report was approved unlawfully, because doing so was within the delegated authority of the Chief Executive and Solicitor to the Council/Director of Governance. We deal with the approval of the Chief Executive's retirement below.
- The pension strain costs which formed a part of four of the five redundancy/early retirement packages under investigation were mandatory in terms of the Council's policy and the LGPS Regulations.
- We consider that the former Chief Executive's application for early retirement was not, on its face, lawfully approved in terms of the Scheme of Delegation. We consider that the other four approvals (in respect of Carole Forrest, Anne Connolly, Robert Anderson and Elaine Galletly) were carried out in accordance with the terms of the Scheme of Delegation.
- We did not find any evidence allowing us to conclude that any recipient of any severance/retirement package, or any other officer, acted improperly. We note that in respect of the former Chief Executive's application for early retirement, officers approved the application under the Scheme of Delegation on behalf of the Council. This means that ultimately, it was the Council that acted unlawfully rather than individual officers.
- We do not consider that there is a reasonable basis for the recovery of any of the sums paid by the Council in respect of the five retirement/redundancy packages. The only package in respect of which a claim could arise (because we consider that it was not approved lawfully) is that of Ms O'Donnell, the former Chief Executive. However, we do not consider that there is a basis for a claim for breach of contract of employment, or unjustified enrichment, against Ms O'Donnell.
- The former Chief Executive's package may not have been approved by the Council in accordance with the terms of the Scheme of Delegation. However, we consider it unlikely that a judicial review of the Council's decision would succeed or that the court would quash the Council's approval, as a

result of (1) the time period that has elapsed since she took early retirement, and (2) the significant personal detriment which would occur if the decision were quashed. We would note that even if a judicial review was brought and succeeded, the Council would then have to take the decision in relation to the former Chief Executive's retirement again, and we consider the outcome would likely be the same.

- We recommend that the Scheme of Delegation makes specific reference to approval of the early retirement or severance arrangements in respect of the Chief Executive.
- We recommend that the Council considers whether a Committee of the Council should require to approve any early retirement or severance arrangements in respect of officers over a particular grade.
- We recommend that the Council sets out in policy or guidance the internal process which is to be followed for approval of early retirement or severance in respect of senior officers.
- The Council should also ensure that it keeps an electronic record of all approvals necessary in terms of its Scheme of Delegation relating to approvals for early retirement and/or severance, and service restructures

## REPORT: INVESTIGATION INTO EXIT PACKAGES OF FORMER SENIOR OFFICERS AT GLASGOW CITY COUNCIL

### 1 INTRODUCTION

- 1.1 We have been instructed by Glasgow City Council ("the Council") to perform an independent investigation into redundancy/early retirement payments made to senior officers employed by the Council between April 2021 and May 2024. We have been provided with terms of reference from the Council instructing us to investigate the payments made to five senior officers, namely:

- 1.1.1 Carole Forrest – Solicitor to the Council and Director of Governance, and Monitoring Officer to April 2021. Carole Forrest received a capped redundancy figure of £95,000, and did not receive any pension contributions.
- 1.1.2 Anne Connolly – Principal Adviser to the Chief Executive to July 2021. Anne Connolly received unreduced access to her SPF pension (i.e. that she was not subject to an actuarial reduction in the value of her pension as a result of retiring early) at a cost to the

Council of £137,213.14 in pension costs and received a redundancy payment of £54,554.22. Her total benefit amounts to £191,767.36.

- 1.1.3 Robert Anderson – Head of Human Resources to January 2023. Robert Anderson received unreduced access to his SPF pension at a cost to the Council of £88,758.53 in pension costs and received a redundancy payment of £58,895.60. His total benefit amounts to £147,654.13.
- 1.1.4 Elaine Galletly – Head of Legal and Administration (and latterly Director of Legal and Administration) to September 2023. Elaine Galletly received unreduced access to her SPF pension at a cost to the Council of £223,065 in pension costs and received a redundancy payment (cited under "compensation for loss of office" in the Finance Report) of £59,971. Her total benefit amounts to £283,036.
- 1.1.5 Annemarie O'Donnell – Chief Executive to May 2024. Annemarie O'Donnell received unreduced access to her SPF pension at a cost to the Council of £317,417 in pension costs and did not receive any other payment on exit.

1.2 The Council has requested that we carry out an investigation into (1) compliance of the payments with the relevant Council policy at the time they were made, and (2) lawfulness of the Council making those payments. This report has been shared with Douglas Ross KC for comment. Douglas Ross KC has prepared his own opinion on the questions posed by the Council. The questions we have been asked by the Council are:

- 1.2.1 In each case, were the severance terms which were offered, and which were accepted by the individuals, consistent with the Council policy which applied at that time?
- 1.2.2 Do you feel able to express a view on any or all of the proposals set out in Mr Anderson's report which are understood to be the justifications for the terminations and associated payments?
- 1.2.3 In each case where the severance terms included a strain on the fund payment by the council to the SPF, do you consider that payment to have been mandatory or discretionary within the LGPS regulations?
- 1.2.4 Did the process for each termination comply with the council's internal rules and governance, including the applicable Scheme of Delegated Functions?
- 1.2.5 Is there any evidence that any recipient of a severance package, or any other officer, acted unlawfully, in breach of contract, contrary to the Council's code of conduct or otherwise improperly in relation to that severance package?

- 1.2.6 Is there any legal basis for the recovery of any sums which were paid as part of any of the severance packages? If so, what procedure would require to be followed and what are the prospects of recovery based on the available evidence?
  - 1.2.7 In relation to the process for approving terminations of the type which this review has been asked to scrutinise, are there any changes in procedure or other recommendations which you would make?
  - 1.2.8 Are there any other actions or steps which you consider the Council should take in light of your findings?
- 1.3 This report has been prepared only for the use of Glasgow City Council, and solely for the purpose and on the terms agreed with Glasgow City Council. It is only to be relied on by Glasgow City Council. We accept no liability (including for negligence) to anyone else in connection with this document.

## 2 INTERVIEWS

- 2.1 As part of this investigation, we interviewed the following Council officers:
- 2.1.1 Martin Booth, Executive Director of Finance, on 16 December 2024;
  - 2.1.2 Mairi Millar, Director of Legal and Administration, on 17 December 2024;
  - 2.1.3 Christine Brown, Head of Human Resources, on 17 December 2024; and
  - 2.1.4 Raymond Farrell, Legal Manager, on 23 January 2025.
- 2.2 While we have not interviewed Annemarie O'Donnell, the former Chief Executive of the Council, we have been provided with a statement from her through her instructed solicitors. We have also been provided with two statements from the Leader of the Council, Councillor Susan Aitken (leader since 2017), and the City Treasurer, Councillor Richard Bell (treasurer since March 2020).

## 3 SCHEME OF DELEGATED FUNCTIONS

- 3.1 We have been provided with the two versions of the Scheme of Delegation that we are told applied to the Council between the period of February 2020 to the time of this report. We understand that the Scheme of Delegation in place from February 2020 ("the February 2020 Scheme") was in force until May 2022, with the Scheme currently in force ("the May 2022 Scheme") then replacing it. However, the May 2022 Scheme is an amended version of the previous Scheme, and is identical in respect of most provisions. The Scheme of Delegation is regularly review and updated, and as a result there are a number of different versions of the May 2022 Scheme which have been in force since that date. However, we are satisfied that in respect of the delegations we consider below, there have been no

substantive changes since May 2022. For the sake of simplicity, we refer to the February 2020/May 2022 Schemes below.

- 3.2 The May 2022 Scheme provides for a general delegation to the Chief Executive or any Executive Director *"to take any decisions necessary regarding employment, retirement, dismissal and training of staff, in terms of the Council's appropriate Schemes of Conditions of Service, subject, where appropriate, to consultation with the Head of Human Resources"* (delegation 6(c), page 9).
- 3.3 The February 2020 Scheme provided for a general delegation to the Chief Executive or any Executive Director *"to take any decisions necessary regarding employment, retirement, dismissal and training of staff, in terms of the Council's appropriate Schemes of Conditions of Service, subject, where appropriate, to consultation with the Director of Governance and Solicitor to the Council"* (delegation 6(c), page 9).
- 3.4 The Chief Executive is authorised *"to approve applications from chief officials for early retiral and voluntary severance"* (delegation 5). There is no definition of "chief officials" within the Scheme but we are told by the Council within our instructions that it incorporates officers at grade 12 and above. This delegation is contained within both versions of the Scheme.
- 3.5 The Chief Executive is also authorised *"to approve, in conjunction with the Executive Director of Finance, applications from employees (except teachers and Chief Officials) for early retiral and voluntary severance"* (delegation 43) and *"in consultation with the Executive Director of Finance, to deal with requests for the application of any of the discretionary elements contained in the Local Government Pension Scheme (Scotland) Regulations 1998"* (delegation 44). These delegations were contained within both versions of the Scheme.
- 3.6 The Executive Director of Finance is authorised *"to administer the Local Government Pension Scheme and implement investment arrangements for the Strathclyde Pension Fund in accordance with the Local Government Pension Regulations"* (delegation 9). This delegation is contained within both versions of the Scheme.
- 3.7 Therefore, in respect of "chief officials", approval of early retiral and voluntary severance is a function delegated to the Chief Executive. This is not a delegation that, in terms of the Scheme, can be exercised by another officer on behalf of the Chief Executive. Approval for the early retiral and voluntary severance of officers who are not chief officials is a function delegated jointly to the Chief Executive and Executive Director of Finance.
- 3.8 There is a general catch-all delegation to the Chief Executive and Executive Directors to take employment decisions, including those concerning retirement (delegation 6(a) under General delegations). This has remained constant through the relevant iterations of the Scheme.

- 3.9 There was also a general delegation to the Chief Executive and Executive Directors under the February 2020 Scheme "to make changes to staffing structures, numbers and grading in accordance with approved pay, grading and rewards arrangements, and subject to the approval of the Director of Governance and Solicitor to the Council and the Executive Director of Finance" (page 8, paragraph 4). Major departmental restructurings or staffing reviews must however be reported to the City Administration Committee for approval. The May 2022 Scheme removed the requirement for approval of the Director of Governance and Solicitor to the Council, and substituted instead the approval of the Head of Human Resources. We understand that it was the February 2020 Scheme which was in force in February 2021, when (as noted) the senior management restructure was approved – i.e. at the time of the Restructure Report, the approval of the Director of Governance and Solicitor to the Council, and the Executive Director of Finance was required in respect of any staff restructure, alongside the Chief Executive and/or the relevant Executive Director.
- 3.10 At page 7, paragraph 4, the Scheme of Delegation states that the Scheme as applicable to officers is subject always:

*"to the obligation on an officer, where he/she considers that a matter may be politically controversial even although it has been specifically delegated to him/her, to consult with the appropriate City Convener. If, after consultation, the officer determines that the matter is politically controversial, it must be referred to committee, as appropriate, for approval."*

- 3.11 This provision has remained constant through the relevant iterations of the Scheme of Delegation.

## 4 FINDINGS IN FACT AND TIMELINE

- 4.1 We have set out a summary of the events relating to the retirement packages below, which form our findings in fact based on the evidence provided. These findings in fact are based on (1) witness statements provided as noted above, and (2) information (such as email correspondence and documents provided by both the Council and individual witnesses).
- 4.2 Of the individuals mentioned in paragraph 1.1:
- 4.2.1 Annemarie O'Donnell (former Chief Executive) was born on [redacted]. She left the Council's employment on 4 May 2024. At the date of her departure, she was 59 years of age. The commencement date of her continuous service with the Council was 20 January 1991, meaning that she had 33 years of continuous service. Our conclusion is that she was a "chief official" within the meaning of the Scheme of Delegation;
- 4.2.2 Carole Forrest (former Solicitor to the Council and Director of Governance) was born on [redacted]. She left the Council's employment on 10 April 2021. At the date of her departure, she was 52 years of age. The commencement date of her continuous service



with the Council was 18 April 1994, meaning that she had 26 years of continuous service. She was a "chief official" within the meaning of the Scheme;

4.2.3 Elaine Galletly (former Head of Legal and Administration) was born on [redacted]. She left the Council's employment on 11 September 2023. At the date of her departure, she was 58. The commencement date of her continuous service with the Council was 30 July 1990, meaning that she had 33 years of continuous service. She was a "chief official" within the meaning of the Scheme;

4.2.4 Anne Connolly (former Principal Advisor to the Chief Executive) was born on [redacted]. She left the Council's employment on 31 July 2021. At the date of her departure, she was 59. The commencement date of her continuous service with the Council was 30 September 1985, meaning that she had 35 years of continuous service. She was not a "chief official";

4.2.5 Robert Anderson (former Head of Human Resources) was born on [redacted]. He left the Council's employment on 6 January 2023. At the date of his departure, he was 61. The commencement date of his continuous service with the Council was 21 August 1989, meaning that he had 33 years of continuous service. He was not a "chief official".

4.3 We are in receipt of statements from the Leader and the Treasurer of the Council (both of whom were in post at the time of the Restructure Report) that they were not aware of Restructure Report at the time it was approved, and only became aware following the publication of the annual accounts which highlighted some of the payments made under the report. We also have a statement from Ms O'Donnell that "[t]he Leader and relevant Convenors were informed of the retirements of the Chief Officials/service reforms at the appropriate time and advised of the reallocation of responsibilities." However, we have not been provided with evidence as to when elected members were informed of the service reforms/reallocation of responsibilities. We therefore accept that if elected members were informed of the terms of the restructure of the Chief Executive's department in the terms envisaged by the Restructure Report, it was after the report was agreed in February 2021. There is no evidence that elected members approved the Restructure Report, or that they were made aware of the terms of the report prior to its approval by the relevant officers noted above. We note that the statement of Ms O'Donnell does not explicitly state that elected members, at any stage, were provided with the Restructure Report – merely that they were informed of the retirements/service reforms "at the appropriate times".

4.4 Although Ms O'Donnell's statement notes that the Leader of the Council and Committee Convenors were informed of the retirements of "Chief Officials", there is no statement that those elected members were informed of the terms on which relevant senior officers left, or asked to approve their departure. We accept that it is likely that elected members would have been aware of the departure of

at least some, if not all, of the senior officers whose departures are the subjects of this report, but there is no evidence to suggest any knowledge on the part of elected members of the details of their departure packages prior to the publication of the Council's accounts.

- 4.5 On or around 11 January 2021, Robert Anderson, Carole Forrest, Elaine Galletly and Annemarie O'Donnell met to discuss the restructuring of the Chief Executive's department. There were no minutes of that meeting. Before this discussion, Robert Anderson sent an email to the participants of the meeting on 11 January 2021 which set the basis of the discussion, including suggestions for exits for all of individuals mentioned above at paragraph 1.1, suggestions for the removal of posts, staff movements and a brief justification for the proposed changes.
- 4.6 On 7 February 2021, Robert Anderson sent the "Proposed Senior Management Restructure Report" (the "Restructure Report") to Annemarie O'Donnell. The Report proposed that:
  - 4.6.1 the post of Solicitor to the Council and Director of Governance (a Grade 13 post) be made redundant, its functions being merged with the responsibilities of a number of senior officers within the Chief Executive's Department. The roles of Solicitor to the Council and Monitoring Officer were to be incorporated in a new role entitled "Solicitor to the Council and Monitoring Officer", at a Grade 12 salary;
  - 4.6.2 the post of Principal Adviser to the Chief Executive (Grade 11) be made redundant and that its function merged with the Governance function (previously the responsibility of the Solicitor to the Council and Director of Governance) to create a new role of Head of Performance and Governance;
  - 4.6.3 the post of Solicitor to the Council and Monitoring Officer be subject to a "bump redundancy" and a post of Legal Manager (Grade 10) deleted;
  - 4.6.4 the post of Head of Human Resources (Grade 11) be subject to a "bump redundancy" and a post of Strategic HR Manager (Grade 11) deleted; and
  - 4.6.5 the Chief Executive (Grade 15) take early retirement in or around late 2022 on grounds of efficiency. The cost of such retirement was noted as amounting to £349,095.
- 4.7 The Report concluded that the above would cost £731,486 with "an on-going saving figure" of £652,658 in a pay-back period of 1.12 years. The "pay-back" period is the amount of time it takes any ongoing savings to meet the one-off cost of any action (i.e. if the one-off cost of an action was £100,000 and the saving delivered was £50,000 per annum, the pay-back period would be 2 years). The costs figure is arrived at by adding the net in year costs of each proposal for redundancy and regrading, as set out within the Restructure Report. The savings figure is arrived at by adding together the "ongoing net saving" in respect of each proposal, as set out within the Restructure

Report. The figures arrived at as noted above include (1) the cost of the early retirement of the Chief Executive within the total costs figure and (2) the deletion of the post of Executive Director of Development and Regeneration Services ("DRS") within the ongoing savings figure.

- 4.8 Mr Anderson made further changes to the Restructure Report on 11 February 2021 in light of further comments from the Executive Director of Finance, Martin Booth, and notified those changes to Ms O'Donnell. Those changes appear to have included reference to the deletion of the post of Executive Director of DRS (Grade 14), providing a saving of £191,292, and linking that deletion to the early retirement of the Chief Executive.
- 4.9 On 15 February 2021, Mr Booth sent an email to Ms O'Donnell with Mr Anderson in copy. Mr Booth stated that having reviewed the updated Report, *"I can confirm that each individual case and the overall project are consistent with Council Policy and the Business Case is comfortably within target parameters. I am therefore fully supportive of the proposals as outlined in the paper."* We consider that this email amounts to approval of the Restructure Report by Mr Booth.
- 4.10 The early retirement of the Chief Executive was linked to the deletion of the post of Executive Director of DRS. The Council's City Administration Committee approved the deletion of this Executive Director position by report dated 14 January 2021. That report did not link the deletion of the Executive Director post to changes within the Chief Executive's department that were the subject of the Restructure Report. However, one part of the former Development and Regeneration Services department (Economic Development and Inward Investment) was moved within the Chief Executive's department as a result of the abolition of the Executive Director post, resulting in the internal transfer of around 80 staff to the Chief Executive's department.
- 4.11 The Report was drafted by the Head of Human Resources (Robert Anderson) and is stated as emanating from the Chief Executive's Department. We cannot see a specific email from the Chief Executive (Annemarie O'Donnell) directly approving the Report. However, we note that an email from the Executive Director of Finance (Martin Booth) approving the Report on 15 February 2021 was sent to Ms O'Donnell. Ms O'Donnell was also involved in correspondence with Mr Anderson regarding the justification for the Report in February 2021. We also note correspondence between Mr Anderson and the Director of Governance and Solicitor to the Council (Carole Forrest) on 1/2 February 2021 concerning the terms of the Report, where Ms Forrest asked Mr Anderson to arrange for Ms O'Donnell and him to speak to Mr Booth, and thereafter document the approval process.
- 4.12 There is an absence of explicit approval recorded from the Chief Executive and the Director of Governance and Solicitor to the Council. However, we consider that the circumstances of the Restructure Report, and surrounding correspondence, amount to implicit approval of the Restructure Report by those officers. The Executive Director of Finance and (by implication) the Head of Human Resources also approved the Report.

- 4.13 On 5 February 2021, Carole Forrest sent a request for redundancy to Annemarie O'Donnell by email marked "Private/Confidential". By email dated 17 February 2021, copying in Mr Anderson as Head of Human Resources, Ms O'Donnell responded as follows:

*"Further to our discussions and my proposal to delete your substantive post, with your remit being distributed across other senior officers, I hereby accept your request to leave the council under the agreed redundancy policy.*

*To tie in with pay periods, your leaving date will move to the mutually agreed date of 13 April 2021.*

*Christine Brown will be in touch directly to address all of the HR details."*

- 4.14 Only the Chief Executive's approval in terms of the Scheme of Delegation was required for Ms Forrest's voluntary severance agreement. However, we note for completeness that while we have not seen any email from Mr Booth, an email from Mr Anderson to an HR officer dated 16 March 2021 states that the voluntary severance request from Ms Forrest had been formally approved by "both the Chief Exec and the Exec Director of Finance". We therefore accept that Ms Forrest's request for voluntary severance was approved by the Chief Executive and the Executive Director of Finance. We discuss below the policies applicable to Ms Forrest.
- 4.15 The application form which was sent to the Chief Executive and Executive Director of Finance noted that the "first year costs" for severance in respect of Carole Forrest (namely, her severance payment) were £95,000. Her payback period was noted as being 0.6 years.
- 4.16 On 11 June 2021, an HR Officer sent the request for voluntary severance (redundancy retirement) for Anne Connolly to Martin Booth and Robert Anderson for approval by email. The request set out that the first-year costs were £191,767.36. Anne Connolly's individual payback period was stated to be 1.5 years. Martin Booth approved this package on 11 June 2021. Robert Anderson replied stating that *"This application is consistent with Council policy on ER/VR release."*
- 4.17 We have seen no direct evidence that Ms O'Donnell approved Ms Connolly's application for voluntary severance. However, there is an email from an HR officer to Mr Booth and Mr Anderson on 11 June 2021, attaching the application, stating that the request for voluntary severance in respect of Ms Connolly came from "the Chief Executive's Department". The application is unsigned but stated as being "approved". We also note that Ms O'Donnell had, in principle, approved Ms Connolly's departure in the form of the Restructure Report.
- 4.18 We therefore find, on the balance of probabilities, that Ms O'Donnell did approve the application of Ms Connolly for voluntary severance. We make further comments on this matter below. On or around 31 July 2021, Anne Connolly left her employment with the Council.

- 4.19 On 30 September 2021, Robert Anderson emailed Elaine Galletly with Martin Booth's email supporting the Restructure Report, stating that *"I'm taking this as Council approval for the actions detailed in the accompanying report."* (i.e. the measures set out at paragraph 4.7).
- 4.20 On 18 October 2022, an HR officer sent a request for Redundancy Retirement for Robert Anderson to Martin Booth and Annemarie O'Donnell. Both Martin Booth and Annemarie O'Donnell approved the request on the same day. The application stated that the first-year costs for Robert Anderson are £145,654.13. His individual payback period is stated as 0.9 years. Robert Anderson's employment with the Council ended on or around 6 January 2023. Lynn Norwood (Grade 11) was appointed to the post of Head of Human Resources, and her Grade 11 post deleted. Subsequently, Ms Norwood resigned on normal retirement terms in June 2023, and Christine Brown was then appointed Head of Human Resources. We therefore find that the "redundancy retirement" of Mr Anderson was approved by Ms O'Donnell, as Chief Executive, as well as the Executive Director of Finance.
- 4.21 On 28 June 2023, Annemarie O'Donnell emailed Councillors Susan Aitken (Council Leader), Richard Bell (Depute Leader and City Treasurer) and Allan Casey. This email mainly concerns roles that do not form part of this investigation, however the email did mention *"I have also considered the savings the reduced management structure will generate. To achieve this an internal recruitment process will be run for both this new post and the vacancy generated by the current Director of Legal & Admin's retirement."* The "new post" referred to was the role of Director of Communication and Corporate Governance, which does not form part of this investigation. As noted above, we have found no evidence that elected members were given a copy of the Restructure Report, or otherwise consulted/advised on the proposals for restructure prior to its approval by Council officers.
- 4.22 On 10 July 2023, an HR officer sent a request for Redundancy Retirement for Elaine Galletly to Christine Brown and Martin Booth, consisting of a "delegated authority" application, and asked those two officers to review the application and advise by return if they were "happy to formally approve this request". An HR officer followed this email with a revised request. Martin Booth approved the revised request on the same day. Christine Brown noted that she was "happy to approve" the application by email the same day.
- 4.23 We have not seen an email from Ms O'Donnell approving Ms Galletly's application. However, we note that Ms O'Donnell's name and role is printed in the "signature" line of the authorisation form (i.e. in lieu of a signature). We also note that Ms O'Donnell had, in principle, approved Ms Galletly's departure in the form of the Restructure Report. We therefore find, on the balance of probabilities, that Ms O'Donnell did approve Ms Galletly's redundancy retirement.
- 4.24 The application stated that the first-year costs for Elaine Galletly were £271,629.97. Her individual payback period is stated as 1.9 years. Elaine Galletly's employment with the Council ended on or around 11 September 2023. Mairi Millar was promoted to Elaine Galletly's former role.

- 4.25 On 6 February 2024, Christine Brown emailed Martin Booth to advise that they would shortly receive the request for approval of Annemarie O'Donnell's early retirement, and her departure would be in line with what was set out in the Restructure Report.
- 4.26 On 12 February 2024, Christine Brown emailed Martin Booth to advise him that the paperwork for Annemarie O'Donnell's request was being finalised. Christine Brown stated in the email that *"The Feb 21 paper indicates that this ER was aligned to the overall senior management reform and in particular linked to the vacant post at the time of Executive Director – DRS which was planned for deletion. I'm content that the G14 DRS post was indeed removed from the structure of the council and not replaced. Are you content that this link be called out as supporting reference, together with the overall Senior Management Restructuring and its aims?"*
- 4.27 On 8 March 2024, an HR officer sent an email to Christine Brown and Martin Booth containing a request for early retirement on the grounds of efficiency for Annemarie O'Donnell. Both Christine Brown and Martin Booth approved her request on the same day. The application stated that the first-year costs for Annemarie O'Donnell were £295,569.71. Her individual payback period is stated as 1.38 years (in that her early retirement was linked to the deletion of the post of Executive Director of DRS). In the request, the following comment is made regarding the business case for approving the package:

*"This request is the final element of the Chief Executive's senior management restructuring paper of February 2021, written by Robert Anderson, then Head of HR and signed off also by Martin Booth, Executive Director – Financial Services. The paper included a number of senior post departures and associated posts deletion with an overall payback period of the package of less than 2 years. The aims of the reform were:*

- a. The on-going requirement to make significant savings over the next three years, consistent with the terms of the current ER/VR policy, and*
- b. A pressing need to address the demographics of the senior team and put in place robust succession planning arrangements. [...]"*

- 4.28 Annemarie O'Donnell's employment with the Council ended on or around 4 May 2024. We find that the early retirement on grounds of efficiency of Annemarie O'Donnell was approved by Martin Booth, the Executive Director of Finance, and Christine Brown, the Head of Human Resources, by email on 8 March 2024, and took effect from 4 May 2024. We note that it appears Mr Booth and Ms Brown did not consider that they were formally approving Ms O'Donnell's application for early retirement. Both have stated that they considered their functions were limited to checking that the applications complied with relevant Council policies. While officers may not have considered themselves as formally approving Ms O'Donnell's early retirement, from a legal standpoint this is what occurred. This is discussed further at Paragraph 8.3.3 of this report.

## 5 Q.1 - IN EACH CASE, WERE THE SEVERANCE TERMS WHICH WERE OFFERED, AND WHICH WERE ACCEPTED BY THE INDIVIDUALS, CONSISTENT WITH THE COUNCIL POLICY WHICH APPLIED AT THAT TIME?

5.1 In terms of the packages that we have been asked to investigate, the relevant Council policies that were in place at the time were the following:

- 5.1.1 **Policy Statement on Discretions including Redundancy and Retirement Provisions** dated 19 March 2015 by Councillor Matthew Kerr (the "2015 Policy"). This policy statement, which was approved by committee, revised the Council's policy on discretions on redundancy and retirement provisions.
- 5.1.2 The 2015 Policy, at part 4, provides *"where employment is terminated early the Council will continue to exercise its discretion to enhance the statutory scheme up to a maximum of 66 weeks contractual pay, as calculated in appendix A"* (in respect of those leaving under the age of 50 or over 50 with no access to pension benefits). Appendix A sets out the level of lump sum based on (1) the age of the employee departing, and (2) years of service, up to a maximum of 66 weeks.
- 5.1.3 The 2015 Policy also provides *"in circumstances of voluntary redundancy/early retirement or compulsory redundancy/early retirement the Council may award up to 4 years and up to 30 weeks lump sum payment as calculated in appendix B and C respectively"* (in respect of those leavers over the age of 55 (or 50 years if members of LGPS as at 5 April 2006) with access to a pension). Appendix C sets out the level of lump sum based on (1) the age of the employee departing, and (2) years of completed service, up to a maximum of 30 weeks (where the employee is 61 years of age or over, and has 20 or more years of completed service).
- 5.1.4 The 2015 Policy also states at paragraph 3.2: *"the Council will seek to ensure the use of these discretions are equitable and have consistent application within any scheme to deal with redundancy/voluntary redundancy/early retirement."*
- 5.1.5 We note that the policy states that the Council "may" award up to 30 weeks lump sum payment, in terms of appendix C. The terms of the 2015 Policy are arguably discretionary in nature. However, we note above the Council's commitment to consistent application of the discretions. We also note the statement within the 2015 Policy that the guidelines (within the policy) *"offer a balance between consistency whilst still allowing some flexibility for exceptional circumstances, as well as the need to consider the overall cost implications."* We consider that the terms of the 2015 Policy give rise to a legitimate expectation that, on redundancy, a leaver will receive a lump sum payment in the terms



set out within the Policy. In other words, the Council is expected to consistently apply the Policy to those falling within its terms unless there are compelling reasons not to do so.

5.1.6 Whether the individual has access to pension benefits is determined by the Local Government Pension Scheme (Scotland) Regulations 2018 ("the LGPS Regulations"). This is further explained in Part 7.

5.1.7 **Introduction of Mechanisms to Support Workforce Reform dated 18 June 2020** by Robert Anderson, Head of Human Resources (the "2020 Policy"). This report which was approved by the City Administration Committee updates the voluntary redundancy scheme for the Council. The report refers to the Scottish Government's guidelines on severance payments, which sets a cap of £95,000 on any such payment, and the maximum pay-back period as not exceeding two years. The report notes that "*these principles do establish a guide to good practice within the public sector*". The report does not, however, go further in specifically adopting the £95,000 severance cap. The 2020 Policy notes that the Council will no longer operate an "added years" element to pensionable service (as originally envisaged by the 2015 Policy) but does retain the provisions within the 2015 Policy to the extent that redundancy arrangement of up to 66 week's pay for those with no access to immediate pension benefits, and up to 30 weeks' pay for those who do.

5.2 The Report states at paragraph 1(a) that the proposals were promoted by the "*on-going requirement to make significant savings over the next three years, consistent with the terms of the current ER/VR policy*".

5.3 The Report also states that the 5 packages would be presented as one package overall for the payback period. Therefore, although an individual's payback period may be more than the two-year period stated in the 2020 policy, the 5 packages overall are within this period. From the interviews we conducted, we understand that presenting multiple severance packages like this is standard within the Council. We also note that, while not explicitly stated therein, such an approach appears to be consistent with the 2020 Policy. Paragraph 2.13 states "*in terms of the balance between these costs and savings the concept of a 2 year payback period is useful. That is, savings should be sufficient to repay the original cost of the reform exercise within a period of two years,*" This is because the 2020 Policy refers to the payback policy in terms, not just of individual redundancies but of "reform exercise[s]" or service reform – i.e. a wider restructuring of any particular service.

5.4 We consider each package below against the criteria set out in the 2015 and 2020 Policies:

5.4.1 Carole Forrest's package – Ms Forrest received a severance payment of £95,000. This is the maximum payment under the cap referred to (but not explicitly adopted) within the 2020 Policy. In terms of Appendix A to the 2015 Policy, she could expect to receive a



lump sum payment equivalent to 63 weeks on departure from the Council if she is treated as falling within the 2015 Policy (amounting to £147,842.90). The payback period is stated in the Delegated Authority Request (i.e. her application for severance) spreadsheet as being 0.6 years, which is within the two-year payback period as outlined in the 2020 policy. She did not receive immediate access to her LGPS pension, and as a result there were no pension strain costs which required to be paid as a result of her severance. It should be noted that Ms Forrest's payment was not a redundancy payment, but rather an agreed sum to be paid on her resignation from the Council. We understand that the reason Ms Forrest received a "severance payment" rather than being formally made redundant is that, in terms of the LGPS Regulations, Ms Forrest would have been entitled to receive some portion of her LGPS pension had she been made redundant, given her age and length of service, as well as a redundancy payment. We understand that had Ms Forrest received a redundancy package on those terms, the payback period would have been in excess of 2 years and therefore not in compliance with Council policy. As a result, the Council agreed with Ms Forrest that she would not be made formally redundant but would receive a severance payment.

- 5.4.2 Anne Connolly's package – Ms Connolly received a redundancy payment of £54,554.22. In terms of Appendix C to the 2015 Policy, she could expect to receive a lump sum payment equivalent to 29 weeks. That figure amounts to £54,703.90. She received unrestricted access to her LGPS pension, with the pension strain costs made by the Council being £137,213.14. The payback period is stated in the Revised Delegated Authority Request spreadsheet as being 1.5 years, which is within the two-year payback period as outlined in the 2020 Policy.
- 5.4.3 Robert Anderson's package – Mr Anderson received a redundancy payment of £56,895.60. In terms of the 2015 Policy, he could expect to receive a lump sum payment equivalent to 30 weeks. That sum amounts to £57,051.78. He therefore received a sum slightly below the 30 weeks payment which he might have received under the 2015 Policy. He also received unrestricted access to his LGPS pension, at a cost to the Council of £88,758.53 in pension strain costs. The payback period is stated in the Delegated Authority Request spreadsheet as being -0.9 years. We presume, given the numbers contained within Mr Anderson's application for voluntary severance, this is a typographical error and should instead be 0.9 years. The payback period is therefore within the two-year payback period as outlined in the 2020 Policy.
- 5.4.4 Elaine Galletly's package – Ms Galletly received a redundancy payment – noted as a "compensation for loss of office payment" in the Council's accounts - of £59,970.84. In terms of the 2015 Policy, she could expect to receive a lump sum payment equivalent to 28.5 weeks, which we calculate would have amounted to £60,135.67. She also received

unrestricted access to her LGPS pension, at a cost to the Council of £223,065 in pension strain costs. The payback period is stated in the Revised Delegated Authority Request spreadsheet as being 1.9 years, which is within the two-year payback period as outlined in the 2020 Policy.

5.4.5 Annemarie O'Donnell's package – Ms O'Donnell did not receive a redundancy payment as her retirement was on the basis of business efficiency, i.e. she was not being made redundant, or subject to a "bump" redundancy. Her payback period was calculated to be 1.38 years, meaning that it was within the two-year payback period as set out in the 2020 Policy. She received unrestricted access to her LGPS pension, at a cost to the Council of £317,417 in pension strain costs. However, we note that it was only possible to arrive at the payback period of 1.38 years by including the savings arising from the deletion of the post of Executive Director of DRS. In the terms that the restructuring of the Chief Executive's department within the Restructure Report was envisaged, the early retirement of Ms O'Donnell was consistent with the two year payback period. However, we consider that there are valid criticisms to be made of bundling her early retirement with the deletion of the Executive Director post, which we note further below.

5.5 We are content that of the five packages noted above, four (i.e. those of Ms O'Donnell, Ms Galletly, Mr Anderson, and Ms Connolly) clearly fall within the terms of the relevant Council policies, namely the 2015 Policy. This is because (1) they have received no more in terms of any lump sum payment than the sums set out in Appendix C to the 2015 Policy, and (2) they have received access to their LGPS pensions in terms of their entitlement and in accordance with the discretions adopted by the Council (as further discussed below).

5.6 However, it is less clear that Ms Forrest's package fell within the scope of a relevant Council policy. This is because Ms Forrest's departure was, ultimately, not deemed a redundancy. Had Ms Forrest been made redundant, she would have been entitled to receive her pension. We have seen an email from an HR officer within the Council dated 10 March 2021 to the extent that because Ms Forrest was over 50 years of age and possessed active membership of LGPS before 5 April 2006, she would be entitled to immediate payment of pension benefits, triggering a strain cost on the pension fund of approximately £380,000. Therefore, her departure was not characterised as either a redundancy (or indeed, early retirement). It is not therefore clear that Ms Forrest fell within the scope of either the 2015 or the 2020 Policies, which deal with early retirement and redundancy.

5.7 We note from an email from Mr Anderson to an HR officer dated 9 March 2021 which states (in respect of Ms Forrest) that "*the figure you need is £95k (i.e. I've applied the cap).*" It is therefore clear that the figure that was paid to Ms Forrest was arrived at with reference to the "cap" of £95,000 for severance payments set out in Scottish Government guidelines (and now in the Scottish Public Finance Manual). As noted above, if Ms Forrest was treated as an individual leaving under

redundancy or early retirement with no access to pension benefits, she would have expected to receive 63 weeks lump sum payment (which amounts to £147,842.90). We also note that in approving Ms Forrest's application for departure, Ms O'Donnell explicitly referred to the terms of the redundancy policies (with wording supplied to her by Mr Anderson). The Chief Executive and the Head of Human Resources understood Ms Forrest's package to be calculated in terms of the 2015 and 2020 Policies.

- 5.8 We note that while the £95,000 severance cap is referred to with approval within the 2020 Policy, it is not explicitly adopted (unlike the two year payback period). However, Council officers appear to have proceeded on the basis that they were applying a cap of £95,000 in respect of any severance package and that such a cap arose from the operation of the 2020 Policy.
- 5.9 Our view is that if Ms Forrest was treated as falling within the scope of the 2015 and 2020 Policies and as being a leaver with no access to pension benefits, her "package" was consistent with the terms of those policies. However, as set out above, it is not clear that Ms Forrest, as a result of the way the Council treated her departure, should have fallen within the scope of those policies. At most, an inference can be drawn that relevant officers within the Council calculated her lump sum on the basis of the 2015 and 2020 Policies.
- 5.10 Aside from that of Ms Forrest, we consider that each package was consistent with Council policy at the time they were offered and accepted, if the figures contained within each package are accepted at face value. We note that Ms Forrest's package appears to have been calculated in accordance with the 2015 and 2020 Policies (or at least, what we consider was officers' understanding of the two policies), but it is not clear that she fell within the scope of those policies. However, we have criticisms of the way that the figures were arrived at – particularly in respect of Ms O'Donnell's early retirement. We set out those criticisms more fully within part 6 below, as they arise from the way in which the proposals contained within the Restructure Report were justified.
- 5.11 As explained further below, had the Chief Executive's early retirement been considered as part of the overall package of proposals contained within the Restructure Report which excluded the savings arising from the deletion of the Executive Director of DRS post, the payback period for the entire package would have amounted to 1.59 years. This would have been within Council policy, and would not have involved (as noted further below) linking the deletion of the Executive Director of DRS role to the early retirement of the Chief Executive – the link for which is limited in justification.

## 6 Q.2 - DO YOU FEEL ABLE TO EXPRESS A VIEW ON ANY OR ALL OF THE PROPOSALS SET OUT IN MR ANDERSON'S REPORT WHICH ARE

## UNDERSTOOD TO BE THE JUSTIFICATIONS FOR THE TERMINATIONS AND ASSOCIATED PAYMENTS?

- 6.1 The justifications set out in the Restructure Report are the following:
- 6.1.1 In relation to Ms Forrest and Ms Connolly's roles, the justification for these redundancies was two posts would be deleted, and two posts regraded in the structure, which would deliver on-going savings within the two-year payback period.
  - 6.1.2 Mr Anderson's role of Head of Human Resources would be subject to a "bump redundancy" – this is where Mr Anderson's role would be filled, and the previous role of his successor would be deleted. The Report states that this is with the objective of reducing the number of Grade 10 and Grade 11 posts within the senior HR structure, with ongoing savings being delivered and within the two-year payback period.
  - 6.1.3 Ms Galletly's post was to be subject to a bump redundancy, in the same manner as explained for Head of Human Resources above. This was to allow for succession planning (as the leave date was in late 2023). There would be an on-going saving delivered which was within the two-year payback period.
  - 6.1.4 There is limited reference within the Report to the Chief Executive's departure, other than that it would be an early retirement on the grounds of efficiency. This presented a cost of £349,095 but was linked to the deletion of the Executive Director of DRS post which was said to provide a saving of £191,292. The rationale for linking Ms O'Donnell's early retirement to the deletion of the post of Executive Director of DRS was not further explained within the Restructure Report.
- 6.2 "Bump redundancy" is a recognised term in employment law (see for example the case of *Murray v Foyle Meats* 1999 (HL (NI) 1 AC) albeit is not referred to directly within the LGPS Regulations or the Council's relevant policies as noted above.
- 6.3 Further justifications are set out in an email from Mr Anderson to Ms O'Donnell dated 11 January 2021 and which formed the basis of the Restructure Report. This email provides further information and justifications for each package which are described in turn below:
- 6.3.1 Carole Forrest departure – by deleting Ms Forrest's role of Solicitor to the Council and Director of Governance and Monitoring Officer, and splitting the responsibilities between the Head of Legal and Administration and other roles, it would produce a significant saving for the Department and provides a means to prepare the next generation of senior officers for senior management roles via succession planning.

- 6.3.2 Anne Connolly departure – *"We are, in part, recognising the evolution of this role but are also seeking to strengthen it in recognising its key importance at the core of the Council by merging the Performance function with Governance. An on-going saving will be realised and a Succession Planning objective will have been achieved."*
- 6.3.3 Annemarie O'Donnell departure – it is stated that there was no plan to deliver a saving for this role, but that the *"action is justified in that an opportunity is presented to the incoming Administration to appoint its own Chief Executive Officer. A timing some months after the election has the added benefit of providing the opportunity for a transitional phase where the incoming new Chief Executive could more effectively take over from the existing over a period of a few months (a sort of Chief Exec elect model)"* (email from Mr Anderson to Ms O'Donnell dated 11 January 2021).
- 6.3.4 Robert Anderson departure – the email states that the former role of the individual who succeeded Mr Anderson (i.e. an existing senior member of the HR team) would be deleted. It states that the justification is *"the beneficial effect of reducing the excessive number of HR officers currently on G11 in the Council and wider ALEOs as well as providing an on-going saving."* There is also mention of departmental succession planning.
- 6.3.5 Elaine Galletly departure – the justification is mainly on succession planning grounds, although it is noted that an on-going saving would be produced.
- 6.4 We have been asked to comment on the justifications for the proposals contained within the Restructure Report and surrounding correspondence. However, we have not been asked to investigate or comment on the organisational merits of the proposed restructure (i.e. how the Chief Executive's department functioned following the restructure). To do so, we would require to interview those responsible for drawing up and approving the Restructure Report, as well as individuals currently within the affected teams and departments who we have not already spoken to. That would significantly expand the scope of this investigation, and the time taken to reach a conclusion.
- 6.5 We have based our conclusions in this section on (1) the figures which have been provided to us in evidence – both in the Restructure Report and the other documents we have been provided with; and (2) the views provided to us by witnesses. It is not within the scope of this investigation to consider whether the figures provided within the Restructure Report, which were used as a rationale for the proposed restructure, were themselves accurate – although as set out above and below, we have considered whether the payments made to departing officers were consistent with applicable policies and regulations.
- 6.6 We understand that one of the drivers for the restructure may have been the desire of a number of senior officers to leave the Council, whether by means of early retirement, redundancy or otherwise.

As we have not interviewed those individuals who have left the Council, we are not in a position to reach a definitive conclusion on whether the restructure was largely driven by personal considerations. However, we note here the views of witnesses that we did interview that the desire of at least some of the relevant officers to leave the Council may have been amongst the motivations for the restructure.

- 6.7 The justifications set out within the Restructure Report and surrounding correspondence concerning approval of the Report centre around cost savings and succession planning. The figures which are laid out in the Restructure Report do come to the total savings and costs figures which are set out in the conclusion to the Report, and to a total payback period of 1.12 years. The justifications for each individual proposal which is the subject of comment in the Restructure Report – namely the redundancies of the Solicitor to the Council and Director of Governance, and Principal Advisor to the Council; and the "bump redundancy" of the Head of Human Resources – appear to be justified in terms of the costs savings noted.
- 6.8 However, the justification for the apparent link between the early retirement of the Chief Executive, and the deletion of the Executive Director of DRS post, is less clear. As noted above, we understand that one rationale for doing so was that part of the Executive Director of DRS's role was being merged into that of the Chief Executive.
- 6.9 The post of Executive Director of DRS was removed by virtue of a report to the City Administration Committee dated 14 January 2020 (which appears to be an error), but which was presented to the City Administration Committee on 14 January 2021 ("the January 2021 Report"). There is no reference in the January 2021 Report to any restructuring of the Chief Executive's department. The only reference to further governance changes concerns alterations to the Scheme of Delegations, and to the committee structure. Therefore, the costs achieved by the deletion of the post of Executive Director of DRS were already achieved by virtue of the January 2021 Report. They were not dependent on the early retirement of the Chief Executive.
- 6.10 We note that the original draft of the Restructure Report as circulated by Mr Anderson on 7 February 2021 does not reference the deletion of the Executive Director of DRS post at all. No link is drawn to the early retirement of the Chief Executive, which in the original draft sits alone (i.e. not linked to any other deletion or proposal). It is only in the final version of the Restructure Report that the linkage between the two posts was made. We understand that this linkage may have been made at the suggestion of Mr Booth, who is noted by Mr Anderson in an email to Ms O'Donnell dated 11 February 2021 in respect of the Restructure Report to have suggested including "a Richard saving" (Richard Brown being the former Executive Director of DRS).
- 6.11 Although we acknowledge that the Chief Executive's direct line management responsibilities were increased as a result of the abolition of the post of Executive Director of DRS, we do not consider that

there is a convincing justification for linking that abolition to Ms O'Donnell's early retirement. As noted above, the Executive Director of DRS post had been abolished approximately a month prior to the Restructure Report, and therefore the savings already achieved. Its abolition was not clearly logically connected to the early retirement of the Chief Executive. We understand that this point may have been raised by Ms Brown in conversations with Mr Anderson consequent to the approval of the Restructure Report by officers.

- 6.12 We note that had the savings occasioned by the deletion of the Executive Director of DRS post not been included in the report (but the costs of the Chief Executive's early retirement been retained), the total costs would have amounted to £731,486, and the total ongoing savings to £461,366. This would have amounted to a total payback period of 1.59 years. While this is less attractive than the period of 1.12 years noted within the Restructure Report, as a package it still meets the Council's 2 year payback period.
- 6.13 We have further criticism of the manner in which the Chief Executive's early retirement was included within the Restructure Report. A proper justification for her early retirement was not set out in the Restructure Report. It appears to be dealt with in a perfunctory manner within the Restructure Report when compared to the other proposals mooted. There is no obvious link drawn between the early retirement of the Chief Executive, and the other proposals contained within the Restructure Report. The early retirement of the Chief Executive does not of itself amount to an obvious restructuring in the same way that the proposals relating to the legal, governance and HR divisions did.
- 6.14 The only justification advanced for the early retirement of the Chief Executive is contained within the email from Mr Anderson to Ms O'Donnell dated 11 January 2021, and copied to Ms Forrest and Ms Galletly. As noted above, the justification for early retirement was that the incoming administration would have the ability to appoint its own Chief Executive (i.e. after the local authority elections in 2022). A supplementary point made by Mr Anderson was that if Ms O'Donnell were to depart several months after the local authority election, the incoming Chief Executive could have a transition period over several months when Ms O'Donnell was still in post.
- 6.15 It is not clear to us that this rationale is, of itself, particularly convincing. Chief Executives and other senior officers are public servants with obligations of impartiality. They are not political appointees and do not attain or leave office solely as a result of changes in the political control of the relevant local authority. Although we accept that the nature of the Chief Executive role means that the postholder will work closely with the political leadership of the Council, we do not consider that giving an incoming administration a chance to select its own Chief Executive is necessarily a convincing justification for the early retirement of Ms O'Donnell, particularly in light of the significant pension strain costs associated with her departure.



- 6.16 We consider that, on the face of the Restructure Report, there is a reasonable justification for each departure as set out therein with the exception of the Chief Executive. We do not consider that a clear business justification is advanced within the Restructure Report either for (1) linking Ms O'Donnell's early retirement to the abolition of the post of Executive Director of DRS, or (2) her early retirement.

**7 Q3 - IN EACH CASE WHERE THE SEVERANCE TERMS INCLUDED A STRAIN ON THE FUND PAYMENT BY THE COUNCIL TO THE SPF, DO YOU CONSIDER THAT PAYMENT TO HAVE BEEN MANDATORY OR DISCRETIONARY WITHIN THE LGPS REGULATIONS?**

- 7.1 Regulation 29(8)(b) of the LGPS Regulations provides that where an individual is 55 years of age or older, and is dismissed from employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual on grounds of business efficiency, then provided the individual has been a member of the LGPS for two years, they would be entitled to and must take immediate payment of his or her pension relating to active membership under the LGPS Regulations, without reduction (i.e. without actuarial reduction to reflect early payment before the member's normal retirement date). If this results in an additional charge on the fund, known as a "strain on fund cost", the employer would be liable to meet the cost of this under Regulation 63 of the LGPS Regulations.
- 7.2 Under Regulation 29(8)(a) of the LGPS Regulations the individual would also be entitled to and must take immediate payment of any additional pension paid for by Additional Pension Contributions (APCs) or by Shared Cost Additional Pension Contributions (SCAPCs). Any such additional pension would be automatically reduced to reflect early payment before normal pension age by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers. As far as we are aware, the LGPS Regulations do not provide the employer with discretion to waive any such reduction.
- 7.3 While redundancy is a status which is defined in law, business efficiency is not and is a matter for the employer concerned. Regulation 29(8) refers only to 'redundancy'. No distinction is made between 'voluntary' redundancy and 'compulsory' redundancy.
- 7.4 Regulation 29(6) provides that where an individual is 55 or older and is electing to take early retirement (i.e. has not been dismissed from employment by reason of redundancy or business efficiency), they may elect to receive immediate payment of his or her pension but the amount of the retirement pension must be reduced by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers. The employer has a discretion under Regulation 29(9) to waive in whole or in part any such reduction. A decision to waive the actuarial reduction may result in a strain on fund cost which the employer would be liable to pay to the fund under Regulation 63. Regulation 58 of the LGPS Regulations requires a scheme employer to adopt a policy statement detailing its



discretionary pension policy in relation to the exercise of its functions under certain specified Regulations, including Regulation 29(9).

- 7.5 The Council's 2015 Policy, at part 4, provides that where an employee requests early payment of pension benefits between the ages of 50 – 60 (age 55 if a scheme member post April 2006), the Council may give consent based on cost and the exigencies of the service. At the time the policy was drafted, employer consent was required for an individual to take voluntary early payment of benefits on and from age 55 (age 50 if a member pre-April 2006) and before age 60. However, such consent is no longer required under LGPS Regulations (other than for flexible retirement).
- 7.6 The Council's Policy, at part 5, under the heading 'Waive all or part of any actuarial reduction', provides that *"It is recommended that the Council continue to adopt this discretion which may be agreed to on compassionate grounds. This is currently included in our arrangements."* This would appear to suggest that actuarial reductions would only be waived in whole or in part on compassionate grounds.
- 7.7 There are four individuals in respect of whom strain on fund costs were payable by the Council to the SPF as a consequence of their early retirement/redundancy packages and resulting entitlement to unrestricted access to their pension. Those were Ms O'Donnell, Ms Galletly, Ms Connolly and Mr Anderson. The details of the packages for each individual are set out above at 5.4. Based on our understanding of the information provided, each of them received early retirement either on grounds of redundancy or business efficiency (the latter in the case of Ms O'Donnell, and the former in the cases of the other three). As confirmed above at 4.2 each of them was over 55 years of age when their employment was terminated. Each of them was therefore entitled to immediate payment of their pensions, under Regulation 29(8)(b) of the LGPS Regulations and the Council, as their employer, was liable to meet the resulting strain on fund costs under the Regulation 63 of the LGPS Regulations.
- 7.8 Therefore, in our view, the strain on the fund payments by the Council to the SPF in respect of each of the individuals above were mandatory under the LGPS Regulations.

## 8 Q4 - DID THE PROCESS FOR EACH TERMINATION COMPLY WITH THE COUNCIL'S INTERNAL RULES AND GOVERNANCE, INCLUDING THE APPLICABLE SCHEME OF DELEGATION?

- 8.1 We have examined each termination separately below. We have also considered, more broadly, the manner in which the Report was approved by the Council.
- 8.2 **Approval of Service Restructure**

- 8.2.1 As noted above, on its face, the Restructure Report was approved by the individuals who were required to approve the Report under delegation 4, page 8 of the Scheme of Delegation – namely, the Chief Executive, and the Director of Governance and Solicitor to the Council. The Executive Director of Finance and the Head of Human Resources (by implication as the author of the report) also approved the Restructure Report, although their approval was not strictly required in terms of the then Scheme of Delegation.
- 8.2.2 It is not immediately clear that the senior management restructure proposed by the Report was a "major departmental restructure or staffing review" which must be reported to the City Administration Committee for approval. The numbers of individuals proposed for early retirement or severance are small, and most of the positions to be deleted are more junior positions (i.e. more junior than the roles of those who were retiring early). We consider that there is a justification for considering that the senior management restructure did not fall within the category of restructures that required to be approved by the City Administration Committee.
- 8.2.3 However, although the Restructure Report was, on its face, approved by officers with delegated authority to do so, it is not apparent to us that relevant Council officers considered whether they required to seek at least input from elected members, if not approval from the relevant Committee, given the nature of the proposals. We consider that this was a failing on the part of relevant officers. We have provided further commentary in respect of officers' duties under the Council's Code of Conduct for Employees below at paragraph 9.7.
- 8.2.4 The Restructure Report proposed the early retirement of the two individuals required to approve the restructure under the Scheme of Delegation, namely the Chief Executive and the Director of Governance and Solicitor to the Council. The Head of Human Resources, who drafted the proposal paper, also stood to retire early under the proposals outlined in the Restructure Report. The only individual involved in the approval process who was independent of the proposals – i.e. was not proposed for early retirement or redundancy, was the Executive Director of Finance.
- 8.2.5 We considered the views ingathered from officers as to why the Restructure Report was not referred to Committee for approval. We summarise those views as being as follows:
- 8.2.5.1 The Chief Executive and the Head of HR had to be involved in the process given the nature of their roles. The Chief Executive in particular was the head of the department in question and so was inevitably involved.

- 8.2.5.2 The Chief Executive was not personally involved in the general restructure envisaged by the Restructure Report. Her departure was linked to the abolition of the post of Executive Director of DRS, and was not dependent on the early retirement or departure of any of the other individuals referred to within the Restructure Report.
- 8.2.5.3 The involvement of the Executive Director of Finance gave the decision a greater degree of independence.
- 8.2.5.4 There was a "culture" of early retirement within the Council, and as a result it was not apparent that senior officers retiring early would necessarily give rise to controversy.
- 8.2.6 We note that the points outlined about do not necessarily reflect the views of the individual officers that we spoke to. They are instead an attempt to rationalise, on the part of those officers, why senior officers might have considered that the Restructure Report could be approved under delegated authority, rather than being referred to Committee.
- 8.2.7 However, the terms of the senior management restructure involved the departure of several senior officers via early retirement or redundancy (including the then Chief Executive, Solicitor to the Council and Head of Human Resources), several of whom were involved in the approval process, and the Council incurring large costs in the form of pension strain costs and loss of office payments. That the Restructure Report was approved by individuals who might be seen to have benefitted from its proposals gives rise to a perception that there was an inherent conflict of interest in the approval process.
- 8.2.8 We also note that, although the Restructure Report itself did not automatically mean the approval of applications for early retirement/severance, officers did rely upon the report in their later approvals of such applications. In such circumstances officers were relying on a report which was approved subject to no outside scrutiny, and with only one of the individuals involved in approving (Mr Booth) who was not someone who stood to benefit from the proposals set out therein. This increases the desirability of there being external scrutiny of some description – i.e. by a Council committee.
- 8.2.9 We consider that the inclusion of the Chief Executive within the Restructure Report and her role in approving the report also increases the perception of a conflict of interest. As noted above, her departure was not dependent on the early retirement of the other Council officers mentioned in the Restructure Report. Had her early retirement been dealt with other than under the Restructure Report, the perception of a conflict of interest would have been lessened (albeit we note that had this approach been adopted, there would have been difficulties in justifying her own early retirement in terms of the two year

payback period policy)). However, that her departure was included meant that two of the officers who under the Scheme of Delegation required to approve the Restructure Report, benefitted from the proposals within the report (either by way of redundancy or early retirement).

- 8.2.10 We have noted above the provision within the Scheme of Delegation at page 7, paragraph 4, requiring officers to consult with the appropriate City Convenor where he/she considers the matter may be politically controversial. Where the officer determines that the matter is politically controversial, it must be referred to committee for approval. A decision on whether a matter is politically controversial is ultimately a matter of judgement for individual officers. However, it is not apparent that officers considered whether there was a possibility of the Restructure Report being politically controversial. Had they done so, we consider it is likely that they would have concluded that there was a possibility of political controversy, and sought advice from the relevant City Convenor (and possibly thereafter sought Committee approval for the proposals within the Restructure Report). Seeking Committee approval would have mitigated some of the criticism arising from a perception of a conflict of interest.
- 8.2.11 We note the potential reasons noted above at paragraph 8.2.5 as to why senior officers did not consider seeking Committee approval. However, it appears to us that there was a failure on the part of senior officers to consider the public criticism – both from members of the public and elected members - that would arise from the retirement of several senior officers in a short space of time, with large sums being paid out to those officers (whether in the form of pension strain costs or redundancy/severance payments). That there is a "culture" of early retirement at the Council is not in our view a relevant reason for failing to seek political input, particularly given the involvement of senior officers affected by the proposals in approval of the Restructure Report.
- 8.2.12 We consider that the failure of senior officers to obtain political input (whether via seeking Committee approval or bringing matters to the attention of the relevant City Convenor) in respect of the restructure has opened the Council to criticism, and a perception of a conflict of interest.
- 8.2.13 We also consider that the manner in which the Restructure Report was approved was overly casual. There was no formal approval from the Chief Executive (whether by email or memorandum) recorded. While we have inferred that the Chief Executive's approval was obtained from the surrounding evidence, we consider that approvals from the officers possessing delegated authority should have been obtained and properly recorded. Mr Booth noted that he was "fully supportive" of the proposals contained within the Restructure Report, rather than "approving" the report. While we have reached the

conclusion that he, as a result, approved the Restructure Report, we consider that approval by way of email in this manner is an overly casual way of approving what formed the basis for a significant restructure of the Chief Executive's department.

- 8.2.14 We have considered whether the points that we make above mean that the Restructure Report was unlawfully approved. As noted above, the Restructure Report was approved under delegated authority. We have found that it obtained the approval of the officers named within the Scheme of Delegation, as well as that of the Executive Director of Finance.
- 8.2.15 We consider that officers should have referred the Restructure Report to the relevant City Convenor for consultation as a matter of potential political controversy. The Restructure Report may have subsequently been referred to the relevant Committee for approval. That would, however, been a matter for the judgement of senior officers together with the relevant City Convenor. It may be that, following consultation, the Restructure Report would have been referred to the relevant Committee for approval but we are not in a position to say whether that would have happened. We cannot, as a result, state that the Restructure Report was unlawfully approved because it was not submitted to a Committee for approval.
- 8.2.16 Ultimately, the lawfulness of any actions of the Council (including actions by officers acting under delegated authority) can only be determined by the Court of Session by way of judicial review. Given the time that has elapsed since the Restructure Report was approved in February 2021, and the retirements of all the senior officers mentioned within the Report, we consider that it is highly unlikely that the Court would grant permission for any judicial review to proceed so long after the three month statutory time limit for bringing such a challenge has elapsed. We have made further comment below concerning legal challenges to the Council's decision-making process. At most, we can say that there are significant shortcomings in the manner in which the Restructure Report was approved – including the fact that no advice was sought from the relevant City Convenor in respect of whether the matter should be referred to Committee given the interests of the senior officers with delegated authority to approve the report. We are not in a position to state whether, as a result, the approval of the Restructure Report was unlawful. However, we make further recommendations below.

### 8.3 Retirement of Annemarie O'Donnell – Chief Executive

- 8.3.1 As noted above, there is no specific provision for approval of the early retirement or severance of the Council's Chief Executive under the Scheme of Delegation. As noted above, approval of early retirement/severance for "chief officials" is delegated to the Chief

Executive. It appears that Ms O'Donnell (as per her witness statement) considered that for her to approve her own early retirement would be a conflict of interest. Therefore, it appears (although this is not formally documented within the evidence we have seen) that she delegated authority to Mr Booth and Ms Brown to approve her application for early retirement. The reason we have reached this conclusion is that the "delegated authority application" in respect of Ms O'Donnell's early retirement is noted as being approved by Mr Booth and Ms Brown. The Council (by which we refer to Mr Booth and Ms Brown as the individuals who are noted as formally approving the application) also appear to have relied on Ms O'Donnell's, Mr Booth's and Mr Anderson's earlier approval of the Report as authority for her early retirement. As discussed further at Paragraph 8.3.3, Mr Booth and Ms Brown did not consider that they were formally approving Ms O'Donnell's package but checking the package against Council policies. However, from a legal standpoint, that is what occurred.

- 8.3.2 Ms O'Donnell, in her statement to us, noted that the role of "Chief Executive" did not fall under the definition of "chief official" within the Scheme of Delegation. As a result, the Chief Executive fell within the scope of delegation 43, which as noted above delegates authority to the Chief Executive and Executive Director of Finance to approve early retirement and severance in respect of employees other than chief officials and teachers. The Scheme of Delegation in force in March 2024 permits delegation 43 to be exercised on the Chief Executive's behalf by the Head of Human Resources (page 31 of the Scheme). Therefore, Ms O'Donnell's position is that her early retirement was validly approved by the Executive Director of Finance and the Head of Human Resources.
- 8.3.3 We note that it appears Mr Booth and Ms Brown did not consider that they were formally approving Ms O'Donnell's application for early retirement. Both have stated that they considered their functions were limited to checking that the applications complied with relevant Council policies. However, the delegated authority application in respect of Ms O'Donnell notes approval from Mr Booth and Ms Brown. The Scheme of Delegation also requires authorisation from particular officers in respect of applications from early retirements. While officers may not have considered themselves as formally approving Ms O'Donnell's early retirement, from a legal standpoint this is what occurred.
- 8.3.4 We have no contemporary evidence to the extent that Ms O'Donnell understood herself to be relying on delegation 43 when her application for early retirement was approved, beyond her own statement. It was not specifically referred to by the officers who approved her retirement. We appreciate that, in terms of the Scheme of Delegation, early retirement is generally a matter for officer approval under delegated authority rather than being for elected members to determine. However, we do not agree that delegation 43 is applicable in the instance of the Chief Executive's departure. This is because there is no definition

contained within the Scheme of "chief official" (although, as noted above, the Council's position appears to be that it includes any officer of Grade 12 or above), still less any definition that removes the post of Chief Executive from its scope. In circumstances where there is no specific definition of "chief official", the Council requires to rely on the ordinary meaning of the term. It is difficult to consider that the Chief Executive is anything other than a "chief official" as the term is used within the Scheme. This remains the case if we accept that "chief official" means an officer at Grade 12 or above. As a result, delegation 43 (which as noted above specifically excludes chief officials from its scope) is not applicable, and the relevant delegation in respect of the Chief Executive is delegation 5 within the Scheme, as noted above.

8.3.5 The Scheme does not allow for the Chief Executive to delegate her functions in respect of approval of early retirement/severance relating to chief officials under delegation 5 to any other officer. Therefore, any delegation by the Chief Executive of that particular function would be unlawful. There is a general delegation to the Chief Executive and executive directors relating to employment decisions as noted above. We can see that, in the event the Council or Ms O'Donnell's representatives wished to argue that the approval by the Executive Director of Finance and the Head of Human Resources of Ms O'Donnell's application for early retirement was lawful, it might be argued that, in the circumstances of the Chief Executive's early retirement, approval of her application fell within that general delegation and could therefore potentially be approved by any Executive Director. This would be because the specific delegation concerning early retirement of chief officials could not apply to the Chief Executive, because it would have placed her in a conflict of interest (rather than because she was not a chief official). Therefore, decisions concerning her early retirement fell within the general delegation concerning employment matters. However, we do not consider that this is a strong argument or one which a Court would ultimately agree with. Early retirements and voluntary severances are specifically "carved out" of the general delegation concerning employment matters, and granted to the Chief Executive (whether alone or acting with another senior officer). We do not therefore consider that any argument that the Chief Executive's retirement could be approved by another Executive Director under the general employment delegation would be sustained. As a result, we do not consider that delegation to be applicable in this case.

8.3.6 All functions of the Council, saving those which are specifically reserved to full Council or otherwise delegated, are delegated to the City Administration Committee under the Scheme of Delegation. In the circumstances of the Chief Executive's early retirement, and in the absence of a specific delegation dealing with the Chief Executive (or a more general delegation which clearly encompasses her role, and did not place her in a conflict of interest), we consider that her application for early retirement could only lawfully be



approved by the City Administration Committee. As a result, we consider that the manner in which the Council approved Ms O'Donnell's early retirement (i.e. via the approval of Mr Booth and Ms Brown) was, on its face, unlawful. We make further observations on the early retirement of Ms O'Donnell further below in the context of a potential challenge to the Council's decision-making.

#### 8.4 **Carole Forrest – Solicitor to the Council and Director of Governance**

- 8.4.1 As noted above, Ms Forrest's departure was characterised as a "voluntary severance" rather than or redundancy. We understand that had Ms Forrest's departure been characterised as redundancy, she would have been entitled to receive her pension under the LGPS Regulations. She received a payment of £95,000. Although as noted above it is not clear that the 2020 Policy specifically adopted the £95,000 cap, Council officers appear to have proceeded on the basis that there was such a cap. As per email from Christine Brown to Robert Anderson dated 5 November 2021, the cost of Ms Forrest's departure was lower than if it had been under the Council's formal early retirement/voluntary redundancy policies (on the basis that had Ms Forrest left under those arrangements, she would have been entitled to receive access to her pension with associated pension strain costs of approximately £380,000). It appears, although we question whether Ms Forrest properly fell within the 2015 and 2020 Policies in terms of the way her departure was characterised, the Council nonetheless had regard to those policies in terms of the terms on which she departed.
- 8.4.2 We have noted above our queries as to whether Ms Forrest properly fell within the scope of the 2015 and 2020 Policies. However, the scope of the Chief Executive's delegated authority in respect of chief officials is to approve applications for "early retiral and voluntary severance". The delegation is not solely limited to early retirements under the 2015 and 2020 Policies. Neither is it limited with reference to voluntary redundancies. The reference to "voluntary severance" implies that the Chief Executive has a delegated authority to approve applications for departure from chief officials which are not early retirement or voluntary redundancies.
- 8.4.3 We note that although Ms O'Donnell approved Ms Forrest's application for "redundancy" (rather than severance), the terms on which Ms O'Donnell approved her application were exactly the same as those which she ultimately received. There were no changes between the terms on which Ms O'Donnell approved Ms Forrest's departure, and the terms of her package on departure. We are therefore content to accept that Ms O'Donnell approved Ms Forrest's application for "voluntary severance" in terms of the Scheme of Delegation.



8.4.4 In terms of the Scheme of Delegation, as Ms Forrest is a chief official, the Chief Executive had delegated authority to approve her severance.

8.4.5 We are therefore content that in terms of the Scheme of Delegation, Ms Forrest's request for voluntary severance was validly approved.

#### 8.5 **Elaine Galletly – Director of Legal and Administration**

8.5.1 As noted above, Ms Galletly departed the Council in July 2023 by way of "redundancy retirement". At the time, she held a Grade 12 position as the Director of Legal and Administration.

8.5.2 As noted above, on the balance of probabilities we are content to accept that Ms O'Donnell had approved Ms Galletly's redundancy retirement in accordance with the Scheme of Delegation. As a result, we consider that Ms Galletly's retirement was lawfully approved in terms of the Scheme of Delegation. However, the Council appears to have regarded only Ms Brown and Mr Booth's approvals as relevant in terms of a formal paper trail. This is not in accordance with the terms of the Scheme of Delegation, which required (and requires) approval from the Chief Executive for early retirement of a senior official. While we are content to accept that it is more likely than not that the Chief Executive had approved the retirement of Ms Galletly, in other cases this approach has the potential to cause problems for the Council. We consider that the Council adopted (as we note in other cases) an overly casual approach towards recording the approval of the early retirement of Ms Galletly, which means that Ms O'Donnell's approval of the former's retirement has required to be inferred from surrounding evidence, rather than being properly recorded. We make further recommendations on this point below.

#### 8.6 **Robert Anderson – Head of Human Resources**

8.6.1 As noted above Mr Anderson departed the Council on 6 January 2023 by way of redundancy retirement. At the time, he held a Grade 11 post as Head of Human Resources. Both Ms O'Donnell and Mr Booth approved Mr Anderson's application for redundancy retirement on 18 October 2022 by email. As noted above, while Mr Anderson's post remained following his departure, a Grade 11 post within the Human Resources division was deleted as a result of his departure and subsequent replacement. We are therefore content that in terms of the Scheme of Delegation, Mr Anderson's request for redundancy retirement was validly approved.

#### 8.7 **Anne Connolly – Principal Advisor to Chief Executive**

- 8.7.1 As noted above Ms Connolly departed the Council on 31 July 2021 by way of redundancy retirement. At the time she held a Grade 11 post as Principal Advisor to the Chief Executive. Her post was due to be deleted as part of the Senior Management Restructure. Mr Booth and Mr Anderson approved her application by way of email. However, we have not seen an email from Ms O'Donnell approving Ms Connolly's application.
- 8.7.2 On the balance of probabilities, we are willing to accept that Ms O'Donnell had approved Ms Connolly's redundancy retirement in accordance with the Scheme of Delegation. However, as with Ms Galletly's departure, the Council has not properly recorded Ms O'Donnell's approval. As with Ms Galletly, while we are willing to accept on the balance of probabilities that the Chief Executive had approved the early retirement/redundancy of Ms Connolly, in other circumstances we may not have been able to reach that view. We reiterate the comments made at paragraph 8.5.2 here.

## 9 Q5 - IS THERE ANY EVIDENCE THAT ANY RECIPIENT OF A SEVERANCE PACKAGE, OR ANY OTHER OFFICER, ACTED UNLAWFULLY, IN BREACH OF CONTRACT, CONTRARY TO THE COUNCIL'S CODE OF CONDUCT OR OTHERWISE IMPROPERLY IN RELATION TO THAT SEVERANCE PACKAGE?

- 9.1 We have interpreted this question as relating to the personal culpability of officers – namely, whether they acted improperly, in breach of their contract of employment or otherwise in bad faith. We have drawn a distinction between decisions of the Council which are unlawful, and individual actions of officers. Officers acting under delegated authority take decisions on behalf of the Council. Where such decisions are unlawful, it is the Council (rather than individual officers) that has acted unlawfully.
- 9.2 We have not seen in the material provided to us any evidence of any recipient of a severance package or any other officer acting improperly in respect of individual severance packages. As noted above, each early retirement or redundancy package complies with the terms of the LGPS Regulations. No officer appears to have received any sum greater than he or she could expect to receive, whether in terms of the LGPS Regulations or the Council's policies. The Restructure Report did not give rise to any greater payments than individuals might otherwise have received. As noted above, it only appears to be Ms Forrest that received any "discretionary" payment. Officers calculated Ms Forrest's package on the basis that the 2015 and 2020 Policies applied to her. We have noted the uncertainty as to whether the £95,000 severance payment cap set out in Scottish Government publications was in fact adopted by the Council in its 2020 Policy. Although it was referred to approvingly within the policy, it was not specifically adopted by the Council within that policy document. We note however that officers appear to have proceeded on the basis that there was such a cap in determining Ms Forrest's package, and applied that cap to her.

- 9.3 We note that significant sums of money have been given to senior officers, both in terms of redundancy payments and in payment of pension strain costs. However, that is directly related to the significant salaries that each earned in their roles. In terms of both the LGPS Regulations and the Council's policies, the pension and/or severance payments that individuals are entitled to on early retirement or redundancy bear a direct relationship to the salary paid.
- 9.4 As noted above, neither the Chief Executive nor the Head of Human Resources took any decision in respect of their own applications for early retirement/redundancy. We have noted our conclusion above that the way in which Ms O'Donnell's application for early retirement was unlawful, in that the Scheme of Delegation does not provide delegated authority for any officer to approve the early retirement of the Chief Executive. However, there is no evidence that the officers who approved Ms O'Donnell's application for early retirement – or any other application for severance or early retirement - did anything other than what they understood to be their functions, namely ensuring that the applications complied with Council policies. We consider that Mr Booth could be reasonably criticised for failing to refer the application of Ms O'Donnell to elected members, as the most senior officer responsible for approving the application, as well as failing to properly consider the terms of the Scheme of Delegation, and where delegated authority properly fell, in approving her application. However, we note for completeness his evidence was that he understood himself to be fulfilling a limited function insofar as he was checking that the application was in line with Council policies.
- 9.5 We have noted above the understanding of Ms O'Donnell that her application for early retirement was approved under delegation 43 (i.e. that it could be approved by the Executive Director of Finance and the Head of Human Resources). We have noted our conclusion to the extent that delegation is not applicable, but we do not consider it gives rise to improper conduct on the part of individual officers. As noted above, it is the action of the Council in approving the application that is, on its face, unlawful.
- 9.6 We have also considered whether any officer acted improperly or unlawfully in approving the Restructure Report. As noted above, we are not able to definitively state that the Restructure Report was approved unlawfully (i.e. that the decision should have been taken by elected members rather than under delegated authority). We have, however, considered whether the officers who approved the Restructure Report could be said to have acted improperly or contrary to the Council's Code of Conduct for Employees.
- 9.7 We note that both the Council's Corporate Code of Conduct for Employees and its employee handbook incorporates the seven Nolan Principles of Life, including "Selflessness" and "Objectivity". Within both the Code of Conduct and the Employee Handbook, selflessness is defined as follows:

*"Employees should not take decisions, which result in any financial or other benefit to themselves, their family, or their friends. Decisions should be based solely on the Council's best interests."*

9.8 Objectivity is defined as follows:

*"Any decisions, which employees take in the course of their work with the Council, including making appointments, awarding contracts, or recommending individuals for rewards or benefits, must be based solely on merit."*

9.9 We consider that the actions of Council officers – particularly the then Chief Executive, and the Director of Governance and Solicitor to the Council in approving the Restructure Report – could reasonably give rise to criticism that they did not act with selflessness or objectivity in approving the Restructure Report. Although the then Head of Human Resources did not take any decisions in respect of the Restructure Report, he drafted the report (including provision for his own retirement). He did not, to our knowledge, raise with other officers whether it was appropriate for senior officers to determine to approve the report under delegated authority, rather than refer the matter to elected members, in circumstances where those senior officers potentially stood to benefit from the proposals within the Restructure Report. As a result, there is a potential breach of the Council's Corporate Code of Conduct for Employees on the part of the former Chief Executive and the Director of Governance and Solicitor to the Council (and, potentially, the former Head of Human Resources). We say this because all three stood to benefit from the restructure, and particularly the severance/early retirement packages, set out within the Report. As noted above, we consider that the course of action which would have been most appropriate given the personal interests of officers involved was for the Restructure Report to be put to the relevant Council committee for approval.

9.10 We note, however, that it is beyond the scope of this investigation to reach a conclusion on what the consequence of such a breach may have been – i.e. what disciplinary sanction could reasonably have been imposed as a result.

## 10 Q6 - IS THERE ANY LEGAL BASIS FOR THE RECOVERY OF ANY SUMS WHICH WERE PAID AS PART OF ANY OF THE SEVERANCE PACKAGES? IF SO, WHAT PROCEDURE WOULD REQUIRE TO BE FOLLOWED AND WHAT ARE THE PROSPECTS OF RECOVERY BASED ON THE AVAILABLE EVIDENCE?

10.1 Any action of the Council is deemed to be lawful unless it is quashed by a competent court or tribunal. Even in circumstances where there are doubts over the lawfulness of a procedure used by the Council to approve a decision, the approval remains lawful unless it is challenged, and a Court upholds the challenge.

- 10.2 We do not consider that there is likely to be any basis for the recovery of sums paid as part of the severance packages. We have focussed our analysis on recovery of sums paid in respect of Ms O'Donnell's retirement package, on the basis that it is only her retirement package which we consider to have been unlawfully approved. Although we have queried above whether Ms Forrest's package properly fell within the terms of the 2015 and 2020 Policies, her severance package was approved in accordance with the Scheme of Delegation. As a result, we do not consider there is any question of any claim arising in respect of her package.
- 10.3 As noted above, we have not found any evidence that any of the severance/retirement packages were in terms outwith the Council's early retirement/redundancy policies, or the LGPS Regulations, in the terms they were approved. Similarly, we have found no evidence of bad faith, fraud or malfeasance in respect of the preparation, approval or payment of those packages, which may have otherwise formed a separate basis for a civil claim.
- 10.4 We have considered whether Ms O'Donnell's early retirement might be realistically vulnerable to challenge, as a result of which the Council's approval of her application would be quashed. However, we think it is unlikely that any challenge would succeed. We examine below the different types of challenge that could conceivably be raised, and set out our views below.
- 10.5 **Claim for breach of contract of employment**
- 10.5.1 We have examined the terms of Ms O'Donnell's contract of employment as provided to us by the Council. There are no terms within the contract which allow for "clawback" of benefits paid out on retirement or otherwise after the end of employment. More generally, we are not able to find any clear breach of the terms of the contract of employment by Ms O'Donnell in respect of her retirement package, and as a result cannot see any basis for any action by the Council arising from the contract. We also note that Ms O'Donnell's early retirement was not entered into by way of a settlement or compromise agreement, containing terms for clawback or termination, which might in other circumstances have potentially given rise to grounds for an action by the Council. We do not therefore consider that there is a basis in contract for an action by the Council against Ms O'Donnell for the recovery of the pension strain costs it.
- 10.6 **Claim for unjustified enrichment**
- 10.6.1 We have considered whether there would be a valid claim for unjustified enrichment by the Council against Ms O'Donnell. The Council would require to show (1) that there had been enrichment of Ms O'Donnell, (2) such enrichment had been at the Council's expense, (3) there was no legal justification for the enrichment and (4) that it would be equitable for the Court to compel redress (*Dollar Land (Cumbernauld) Ltd v CIN Properties Ltd* 1998 S.C. (H.L.) 90). The existence of another statutory remedy will

normally rule out a claim based on unjustified enrichment, but will not do so in all circumstances (*Pert v McCaffrey* [2020] CSIH 5). In this case, because there is no claim arising under contract, there is no barrier to a claim for unjustified enrichment based on the existence of an alternative statutory remedy.

- 10.6.2 It is not obvious that the pension strain costs paid by the Council in respect of Ms O'Donnell amount to "enrichment". In the case of *Dollar Land (Cumbernauld) Ltd*, the House of Lords, as per Lord Cullen, held that enrichment does not occur when a person receives no more than their entitlement (i.e. repayment of a debt lawfully due to her). However, the Stair Memorial Encyclopaedia states:

*"As a general rule, to qualify as a legally relevant enrichment, the acquisition of the benefit must increase the value of the defender's net worth, ie his total patrimonial estate comprising the sum total of his assets less his liabilities."*

- 10.6.3 In this case, Ms O'Donnell has received a benefit to which she is entitled. However, at the same time, her net worth has increased – i.e. she has received unrestricted access to her pension before the age at which she would, but for her early retirement, ordinarily have received access to her pension. It may be that the Council could demonstrate in respect of the first criteria that there had been enrichment of Ms O'Donnell. However, we consider that the Council would be unlikely to meet the third and fourth criteria for recovery – i.e. that there was no legal justification for the enrichment and that it would be equitable for the Court to compel redress.

- 10.6.4 We consider that the approval of Ms O'Donnell's application for early retirement was unlawfully approved. However, the basis for our conclusion is not that Ms O'Donnell was not entitled to the pension strain costs which she received, but instead that the Council acted in a procedurally improper manner in approving her application. The pension strain costs paid in respect of Ms O'Donnell were made in accordance with LGPS Regulations – i.e. Ms O'Donnell was entitled to payment of those strain costs by the Council on early retirement. The error by the Council in approving the application did not mean that Ms O'Donnell received any greater sum than she might otherwise have received.

- 10.6.5 It is a principle of the law of unjustified enrichment that where a benefit is transferred to an individual by mistake, the pursuer will be denied recovery to the extent that the defender is legally entitled to the benefit, as per *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 A.C. 349, Lord Hope at 408, who stated:

*"the payee cannot be said to have been unjustly enriched if he was entitled to receive the sum paid to him. The payer may have been mistaken as to the grounds on which the sum*

*was due to the payee, but his mistake will not provide a ground for its recovery if the payee can show that he was entitled to it on some other ground."*

- 10.6.6 We consider that Ms O'Donnell falls into this category, in that she has received a benefit from the Council to which she is legally entitled. As a result, any error on the Council's part in approving that benefit does not give rise to a valid action in unjustified enrichment.
- 10.6.7 For completeness, we consider that the fourth criteria in respect of an action for unjustified enrichment – that it would be equitable for the Court to order redress – is unlikely to be met. This is for the reason outlined above – namely that Ms O'Donnell has received a benefit in unrestricted access to her pension that she is legally entitled to under the LGPS Regulations. The Court is unlikely to consider it equitable, as a result, for an order for redress to be made. The Court is also likely to have regard to the significant personal detriment that would result to Ms O'Donnell in ceasing to receive unrestricted access to her LGPS pension. The Court, in considering what is equitable, is entitled to take the whole circumstances of the matter into account, and we consider would be entitled to take into account the effect on Ms O'Donnell of any order for redress.

## 10.7 **Application for judicial review**

- 10.7.1 If a challenge were to be made against the Council's decision to approve Ms O'Donnell's application for early retirement on the basis that the decision was unlawful, such a challenge would lie by way of judicial review to the Court of Session. There is a three month time limit for raising a judicial review, beyond which time any such application must be approved by the Court. Any such application for judicial review must be made by a person with standing.
- 10.7.2 Applications for judicial review in respect of severance arrangements for the employees of public authorities have been entertained by the English courts (including *Eastbourne Borough Council v James Foster* [2001] EWCA Civ 1091). In the *Eastbourne BC* case, a former employee raised an application for judicial review in respect of a decision of his employer not to award "added years" for the purpose of calculating the employee's pension entitlement. The case of *Rose Gibb v Maidstone & Tunbridge Wells NHS Trust* was an action for payment by a former employee against her former employer in respect of sums agreed in the context of a severance agreement. The NHS Trust defended the action on the basis that the severance agreement was ultra vires by virtue of being irrationally generous. The Court of Appeal found that the agreement was not ultra vires: the employer was entitled to be generous both for the sake of the employee in question and the employer's reputation. This was not an application for judicial review but the Court, in considering questions of vires and rationality and reaching a decision on those



grounds, dealt with matters which ordinarily fall within a challenge under public/administrative law.

- 10.7.3 We consider that in principle, an application for judicial review in respect of the Council's decision to approve Ms O'Donnell's application for early retirement would be competent because any such application would be aimed at the lawfulness of the Council's decision. There is not, as noted above, an alternative remedy open to any other party. Any such challenge would be against the Council.
- 10.7.4 It could only be a third party that would be able to raise an application for judicial review. We note that public disclosure of this report would materially increase the risk of any such challenge being raised. However, the statutory three month time limit has now passed. The Court would have to take into account the substantial personal prejudice that may arise to Ms O'Donnell of allowing any challenge out of time, as well as any reasons for allowing the challenge although late. We consider that the Court would place particular weight on the adverse consequences arising to Ms O'Donnell of the approval of her early retirement, and consequentially access to her LGPS pension, being quashed.
- 10.7.5 Any application for judicial review would be raised on the basis that the Council followed an improper procedure in approving Ms O'Donnell's application, and that as a result its decision to approve the application for early retirement was unlawful. We note that while there is (as noted above) a convincing argument that the Council followed an improper procedure when approving her application for early retirement, the terms on which she retired were those she was entitled to under the LGPS Regulations. The Council had also previously, in principle, approved the Restructure Report which set out the basis for the Chief Executive's departure. The Council would therefore be able to take the position that regardless of the precise route utilised to approve Ms O'Donnell's application for early retirement, it had limited discretion to refuse her application. As a result, any procedural impropriety in the way that the Council approved her application for early retirement did not have any substantive consequences. We consider that it is likely that the Court would give some weight to that argument and refuse to quash the Council's decision.
- 10.7.6 We consider that it is likely, even if the Court were to consider that the Council's decision to approve Ms O'Donnell's application for early retirement was unlawful, that it would refuse to quash the decision as a result of (1) the significant prejudice that would be caused to Ms O'Donnell, and (2) that Ms O'Donnell received no more than she was entitled to under the LGPS Regulations. The Court of Session has been willing not to



reduce, or to suspend the reduction of, unlawful decisions where to do so would lead to significant prejudice to the interests of third parties.<sup>1</sup>

- 10.7.7 We also note that the Court of Appeal, in *Maidstone*, refused to overturn a severance agreement on the basis that it was overly generous, noting the discretion that employers had in agreeing settlement terms for a departing employee. In this case, given that Ms O'Donnell received only what she was entitled to under the LGPS Regulations, we consider it is unlikely that the Court would consider that the terms of Ms O'Donnell's early retirement were overly generous. As a result, it is unlikely that the Court would be persuaded to quash the Council's decision by any view that there had been some level of irrational generosity in the package awarded to Ms O'Donnell. For completeness, we do not consider that there are reasonable prospects for any action seeking to quash the Council's decision on the basis of irrationality.
- 10.7.8 We would note that even if a judicial review was brought and succeeded, the Council would then have to take the decision in relation to the former Chief Executive's retirement again. Given that the former Chief Executive retirement "package" consisted only of immediate and unrestricted access to her LGPS pension, which she was entitled to under the LGPS Regulations, we consider that the outcome would likely be the same.
- 10.7.9 For completeness, we do not consider that any judicial review concerning the approval of the Restructure Report by senior officers would have anything other than poor prospects of success. We say this because (1) the Restructure Report was approved four years ago, significantly beyond the three month statutory time limit for raising a judicial review; (2) the Restructure Report was approved on its face within the delegated authority of relevant officers; and (3) the significant prejudice that would occur to the interests of the five officers who retired or departed the Council subsequent to and in consequence of the terms of the Restructure Report.

## 11 Q7 - IN RELATION TO THE PROCESS FOR APPROVING TERMINATIONS OF THE TYPE WHICH THIS REVIEW HAS BEEN ASKED TO SCRUTINISE, ARE THERE ANY CHANGES IN PROCEDURE OR OTHER RECOMMENDATIONS WHICH YOU WOULD MAKE?

- 11.1 We recommend that the Scheme of Delegation is amended to provide for a specific delegation in respect of the approval of severance or early retirement of the Chief Executive. That may take the form of delegation to particular senior officers (for example, the Executive Director of Finance in

<sup>1</sup> See *Greenpeace Limited, Petitioner* [2025] CSOH 10 from paragraph [153] onwards

conjunction with the Director of Legal and Administration and Head of Human Resources), or to the City Administration Committee.

- 11.2 The Council may also wish to consider whether severance or early retirement packages in respect of officers above any particular grade should be reported to the City Administration Committee (or other committee) for approval in advance of such packages taking effect. The Council may also wish to consider setting out in policy or guidance the internal process which is to be followed for approval of early retirement or severance in respect of senior officers, separately from any formal approval under delegated authority or by Committee. That policy might specifically set out the officers that require to be consulted, and any criteria that any applications require to be measured against. We understand that the Council is formulating draft guidance in respect of the approval of business cases where officers who prepare the business case potentially stand to benefit as a result of its approval.
- 11.3 The Council should also ensure that it keeps an electronic record of all approvals necessary in terms of its Scheme of Delegation relating to approvals for early retirement and/or severance.
- 11.4 We note that the approach taken by senior officers towards both the approval of individual applications for early retirement/severance, and indeed the Restructure Report, was overly casual. Records of all the approvals required (particularly that of the Chief Executive in respect of both the Restructure Report and some of the applications for early retirement/severance, and the Solicitor to the Council and Director of Governance in respect of the Restructure Report) were not kept, and a proper paper trail is lacking. The Council should ensure that a proper record is kept of necessary approvals in terms of the Scheme of Delegation relating to service restructures.

## 12 Q8 - ARE THERE ANY OTHER ACTIONS OR STEPS WHICH YOU CONSIDER THE COUNCIL SHOULD TAKE IN LIGHT OF YOUR FINDINGS?

- 12.1 Please see our recommendations at part 11 above.